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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,301	04/20/2004	Michael B. Zemel	31894-202099	2573
26694	7590	01/03/2007		
VENABLE LLP			EXAMINER	
P.O. BOX 34385			WEBMAN, EDWARD J	
WASHINGTON, DC 20043-9998				
			ART UNIT	PAPER NUMBER
			1616	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/03/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/827,301	Applicant(s) ZEMEL ET AL.	
	Examiner Edward J. Webman	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10/16/06, 11/15/06</u> . | 6) <input type="checkbox"/> Other: _____ |

Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1 and 7, "during a period of time" is vague; the period is unlimited rendering the metes and bounds of the claim unclear. "above suboptimal levels" is vague because it is subjective as to what is suboptimal. "Below ad lib" is vague because it is unclear as to how "ad lib" is determined.

In claims 5 and 10, "farm animal" is vague; it's metes and bounds are unclear. It can include invertebrates such as insects and worms.

In claim 8 "animal food" is vague; it is unclear as to whether the term includes human food. In claim 9 "pet food" is vague; it can include invertebrates.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Metz et al (AJH 1:58-60 1988).

Metz et al teach a reduction in body fat content in rats consuming higher diets of calcium (abstract).

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It would have been obvious to one of ordinary skill to formulate a high calcium diet for an animal to achieve the beneficial effect of a reduction in body fat content in view of the Metz et al results.

As to the claimed reduced risk of diabetes, it is well known, even to the layman, that obesity increases the risk of diabetes, and, therefore, a method of reducing weight will reduce that risk. One of ordinary skill would further recognize that mammals in general are subject to this risk.

Applicants argue that Metz does not teach the administration on a daily basis of dairy product containing calcium above suboptimum levels. However, Metz teaches an experiment over 11 weeks using three diets, including low calcium, medium calcium and high calcium (see Materials and Methods section), comparable to the experiment using milk that applicants disclose in their Example 1. As to the claimed dairy product, one of ordinary skill, even the layman, recognizes that milk is a source of dietary calcium. Thus, it would be an obvious expedient to formulate milk as the vehicle for a high calcium diet.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by

Schroeder et al.

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Schroeder et al teach a solid animal feed supplement containing calcium. It is poured into packages (abstract). Ruminants are disclosed (column 1 lines 50-54). As to the claimed pet food, such is merely an intended use. As to the claimed accompanying description of a method of use, applicants' instructions are obvious in view of Metz et al, and, therefore, do not render the anticipated composition patentable.

Applicants argue that Schroeder et al teach away from the claimed invention because the reference teaches weight maintenance or gain. However, that weight maintenance or gain is due to the molasses and/or fat in the composition (abstract). Applicants do not exclude these ingredients. Applicants additionally argue that Metz' teaching of high sodium would be inapplicable to feedlot food packages. However, applicants' argument is mere opinion.

Claims 1-10 rejected.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward J. Webman whose telephone number is 571-272-0633. The examiner can normally be reached on M-F from 8 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. Richter, can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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